



Garden State CLE  
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## Video Course Evaluation Form

Attorney Name \_\_\_\_\_

Atty ID number for Pennsylvania: \_\_\_\_\_

Name of Course You Just Watched \_\_\_\_\_

### Please Circle the Appropriate Answer

Instructors:      Poor              Satisfactory              Good              Excellent

Materials:      Poor              Satisfactory              Good              Excellent

CLE Rating:      Poor              Satisfactory              Good              Excellent

**Required:** When you hear the bell sound, write down the secret word that appears on your screen on this form.

Word #1 was: \_\_\_\_\_ Word #2 was: \_\_\_\_\_

Word #3 was: \_\_\_\_\_ Word #4 was: \_\_\_\_\_

What did you like most about the seminar?

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

What criticisms, if any, do you have?

\_\_\_\_\_  
 \_\_\_\_\_

I Certify that I watched, in its entirety, the above-listed CLE Course

Signature \_\_\_\_\_ Date \_\_\_\_\_

# **Garden State CLE Presents**

## **Exam Cram**

### **Municipal Court Trial Certification Exam Final Review**



## **Lesson Plan**

## **Part I - New DWI Cases for 2013 – 2014**

Missouri vs. McNeely, 133 S.Ct. 1552(2013)

State vs. Adkins, 433 N.J.Super 479(App.Div.2013)

State vs. O'Driscoll, 215 N.J. 461, 73 A.3d 496(2013)

State vs. Chun, 215 N.J. 489, 73 A.3d 1241(2013)

State vs. Cahill, 213 N.J. 253, 61 A.3d 1278(2013)

State vs. Gibson, 429 N.J.Super 456, 60 A.3d 493(App.Div.2013)

State vs. Wolfe, 431 N.J.Super 356, 69 A.3d 164(App.Div.2013)

## **Part II - New and Amended Statutes 2013 - 2014**

N.J.S.A. 39:6B-2 – “The Court also shall suspend the person's right to operate a motor vehicle over the highways of this State for a period of one year from the date of conviction; provided, however, the period of license suspension may be reduced or eliminated if the person provides the court with satisfactory proof of motor vehicle liability insurance at the time of the hearing.”

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See N.J.S.A. 2C:46-2(d)(2) \$50 and 90-day cap

See N.J.S.A. 2B:12-23.1 (adds community service option)

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N.J.S.A. - 39:5-36. Incarceration on default of payment of penalty or surcharge; court action upon default on payment of a penalty.

a. The court may incarcerate in the county jail or workhouse of the county where the offense was committed any person upon whom a penalty or surcharge pursuant to subsection f. of section 1 of [P.L.2000, c. 75 \(C.39:4-97.2\)](#) has been imposed for a violation of any of the provisions of this subtitle where the court finds that the person defaulted on payment of the penalty or surcharge pursuant to subsection f. of section 1 of [P.L.2000, c. 75 \(C.39:4-97.2\)](#) without good cause and that the default was willful. Incarceration ordered under this subsection shall not reduce the amount owed by the person in default. In no case shall such incarceration exceed one day for each \$50 of the penalty or surcharge so imposed, nor shall such incarceration exceed a period of 90 consecutive days.

b. Except where incarceration is ordered pursuant to subsection a. of this section, if the court finds that the person has defaulted on the payment of a penalty the court may take one or more of the following actions:

(1) the court shall take appropriate action to modify or establish a reasonable schedule for payment;

(2) if the court finds that the circumstances that warranted the penalty have changed or that it would be unjust to require payment, the court may revoke or suspend the penalty or the unpaid portion of the penalty;  
or

(3) if the defendant has served jail time for default on a penalty, the court may order that credit for each day of confinement be given against the amount owed. The amount of the credit shall be determined at the discretion of the court but shall be not less than \$50 for each day of confinement served.

When such person shall have been confined for a sufficient number of days to establish credits equal to the aggregate amount of such penalties and costs, and is not held by reason of any other sentence or commitment, he shall be discharged from such imprisonment by the officer in charge of the county jail or workhouse.

c. For the purposes of this section, “penalty” means any fine, statutorily-mandated assessment, surcharge, or other financial penalty imposed by a court pursuant to this subtitle, but does not include a surcharge imposed pursuant to subsection f. of section 1 of [P.L.2000, c. 75 \(C.39:4-97.2\)](#).

Cross reference – [N.J.S.A. 2B:12-23.1](#)

## **Part III – Lightning Round Trivia**

Two constitutional rights for which people charged with disorderly persons offenses are not entitled.

Three Statutes of Limitations for motor vehicle offenses

What is the relationship between motor vehicle statute of limitations and service of process?

Give two examples of the burden of proof in municipal court for each of the following:

Reasonable suspicion

Probable Cause

Preponderance of the evidence

Clear and Convincing Evidence

Proof beyond a reasonable doubt

What is the statute of limitations for an ordinance violation?

What is the statute of limitations for a petty disorderly persons' offense?

Name 4 predicate municipal court offenses for domestic violence.

Name 4 predicate relationships for domestic violence offenses in municipal court.

What is the name of the case that permits waiver of a drivers' license suspension following a conditional discharge?

What is the definition of a consequence of magnitude?

Name 4 traffic offenses that carry mandatory surcharges

Name three ways a motorist can reduce MVC penalty points.

Name 4 ways operation can be proved in a drunk driving case.

What is the waiting period to expunge a disorderly persons' offense?  
When does that period begin?

Under what circumstances is an arrested intoxicated driver not required to submit to a breath test?

Name 4 core foundational documents needed in an Alcotest prosecution.

Under what circumstances can a driving while under influence of drugs case be decided without expert testimony?

Describe the subject-matter jurisdiction of the municipal court. Where does it come from?

Why is municipal court described in the law as an inferior court?

## **Part IV – A FEW Memorable Cases & Rules**



State vs. Skillman, 226 N.J.Super 193, 199-200, 543 A.2d 1016(App.Div.1988)  
State vs. Kent, 391 N.J.Super 352, 918 A.2d 626(App.Div.2007)  
Crawford vs. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed. 2d 177(2004)  
Romano vs. Kimmelman, 96 N.J. 66, 474 A.2d 1(1984)  
State vs. Weller, 225 N.J.Super 274, 542 A.2d 55(LawDiv.1986)  
State vs. Chun, 194 N.J. 54, 145, 943 A.2d 114(2008)  
State vs. Hammond, 118 N.J. 306, 571 A.2d 942(1990)  
State vs. Dively, 92 N.J. 573, 458 A.2d 502(1983)  
State vs. Hand, 416 N.J.Super 622, 7 A.3d 797(App.Div.2010)  
State vs. Hessen, 145 N.J. 441, 678 A.2d 1082(1996)  
State vs. Tischio, 107 N.J. 504, 527 A.2d 388(1987)  
State vs. Holup, 253 N.J.Super 320, 601 A.2d 777(App.Div.1992)  
State vs. Bealor, 187 N.J. 574, 902 A.2d 226(2006)  
State vs. Tamburro, 68 N.J. 414, 420-21, 346 A.2d 401(1975)  
State vs. Daly, 64 N.J. 122, 313 A.2d 194(1973)  
State vs. McColley, 157 N.J.Super 525, 385 A.2d 264(App.Div.1978)  
State vs. Sisti, 62 N.J.Super 84, 162 A.2d 297(App.Div.1960)  
State vs. Reiner, 180 N.J. 307, 850 A.2d 1252(2004)  
State vs. Laurick, 120 N.J. 1, 575 A.2d 1340(1990)  
Barker vs. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101(1972)  
State vs. Doriguzzi, 334 N.J.Super 530, 760 A.2d 336(App.Div.2000)  
State vs. Kirk, 202 N.J.Super 28, 493 A.2d 1271(App.Div.1985)  
State vs. Marquez, 202 N.J. 485, 510–514, 998 A.2d 421(2010)  
State vs. Cummings, 184 N.J. 84, 875 A.2d 906(2005)  
State vs. Filson, 409 N.J.Super 246, 976 A.2d 460(LawDiv.2009)  
State vs. Fyffe, 244 N.J.Super 310, 582 A.2d 812(App.Div.1990)  
Terry vs. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889(1968)  
Delaware vs. Prouse, 440 U.S. 648, 663, 99 S.Ct. 1391, 59 L.Ed.2d 660(1979)  
State vs. Gonzalez, 114 N.J. 592, 606, 556 A.2d 323, 330 (1989)

Rule 7:8-5

Rule 7:1

Rule 1:1-2

Rule 1:1-1

Rule 7:6-2

Rule 7:7-7

Rule 7:9-4

## **Part V – Practice Essays**

### **Essay 1 - The Adventures of Jake and Elwood**

On November 21, 2013, two new clients arrived at your office for an appointment. They are named Jake and Elwood. They appeared to be in their early twenties. Jake speaks with a strong accent. He explained that he and Elwood have been roommates at Seton Hall University in South Orange for the past three years. Jake is a visiting student from France. Elwood is from Fort Lee. During their time as roommates, Jake has acquired an extreme affection for watching NFL football from Elwood. As is their custom, on Monday night, November 18th, the two of them tuned in the weekly game in their college dorm room. During the first half of the game, they jointly consumed a six-pack of Old Milwaukee Beer. At half-time, Elwood announced that he wanted to go out to purchase more beer and pick up a pizza. He asked to borrow Jake's car keys and promised to try to return in time for the third quarter. In response, Jake tossed him his car keys and promised to text him the results of any plays he might miss when the game resumed.

After the third quarter began, Jake soon tired of texting each play. Instead, he lay down on his couch and fell fast asleep. At about 2:45 a.m., he was awakened by a loud pounding on the door. When he opened it, two South Orange police officers stepped into his dorm room and asked if he was Jake from France. When he responded, "Yes", he was immediately arrested, placed in handcuffs and driven to the police station. On the way to the station, one of the arresting officers asked him, "Where is your car tonight, Jake?" Jake explained to the officer in great detail how he had loaned his car to Elwood to purchase beer and pizza hours ago.

Upon arrival at the police station, Jake was processed and handed motor vehicle summonses charging him with allowing the intoxicated-

operation of a motor vehicle (N.J.S.A. 39:4-50(a)) and permitting the intoxicated operation of a motor vehicle in a school zone (N.J.S.A. 39:4-50(g)(1)). Before his release from custody, a detective from the police department informed him that Elwood had been involved in a single-car accident and had smashed up Jake's car. Elwood was the only person injured as a result of the accident. He was taken to a hospital for emergency medical treatment in Newark. The police took a blood sample from Elwood while he was in the hospital emergency room. The hospital also withdrew a blood sample for diagnosis and treatment purposes. Based upon his general demeanor at the accident scene, Elwood was charged with driving while intoxicated (N.J.S.A. 39:4-50(a)) and driving while intoxicated within 1000 of a school (N.J.S.A. 39:4-50(g)(1)) as well as reckless driving (N.J.S.A. 39:4-96). Elwood has one previous arrest for driving while intoxicated in Pennsylvania when he was 18 years old. All of the issued summonses have a first appearance date of December 18th in South Orange Municipal Court.

For purposes of this question, you may assume that the blood sample taken by the police from Elwood's body will result in 0.81% BAC at the New Jersey State Police Forensic Labs. You may further assume that the results from the blood sample taken by hospital staff for diagnosis and treatment will test out at .092% serum.

Jake and Elwood desire that you represent both of them on their respective tickets. Please discuss the legal issues and challenges associated with representing these defendants. Please include in your discussion all important substantive and procedural issues related to the Rules of Court, ethical concerns under the New Jersey Rules of Professional Conduct, Supreme Court Directives, any constitutional questions, pre-trial motions, possible plea bargaining dispositions, trial considerations, sentencing, and any other relevant issues.

## **Essay 2 - The Discovery Squabble**

In a drunk-driving prosecution, the prosecutor seeks to introduce into evidence the results of breath samples taken from the body of the defendant within an hour of operation of his motor vehicle. In his discovery package, the prosecutor has not included the Alcotest Operator Card of the police officer who conducted the defendant's test.

1. What options are available to the defense attorney on a pre-trial basis in order to obtain the missing discovery item?
2. What options are available to the defense attorney during if the prosecutor attempts to utilize this missing discovery item?
3. How can the defense counsel respond to the argument by the prosecutor that the officer's Alcotest Operator Card is not necessary and that the same proofs can be satisfied simply by the officer's testimony that he was appropriately licensed to operate the Alcotest on the date the defendant was arrested.

In your answer, please refer to relevant case law, statutes, N.J.A.C. provisions, Rules of Court and other helpful New Jersey law.

## **Essay 3 - The Very Bad Driver**

A new client has retained you to represent him on a stop sign violation (N.J.S.A. 39:4-144) and a driving on the revoked list ticket. (N.J.S.A. 39:3-40). You have previously waived a first appearance and are now scheduled for a pre-trial conference within ten days. Prior to the next court date, your client appears at your office with a motor vehicle abstract that he has gotten from the New Jersey Motor Vehicle Commission. The abstract reveals that on the date he was given the summonses, the defendant had completed the determinate term of a two-year suspension of his driving privileges for a second offense drunk driving conviction. However, his license remained administratively suspended following the expiration of the sentence for not having installed an ignition interlock device on the vehicles he owns or principally operates. The defendant explains that he owns no vehicles, does not drive and cannot get a valid license since he is not lawfully in the United States.

Please discuss the available options for representing this defendant in municipal court in ten days. Include in your discussion all important substantive and procedural issues related to the Rules of Court, ethical concerns under the New Jersey Rules of Professional Conduct, Supreme Court Directives, case law, any constitutional questions, pre-trial motions, possible plea bargaining dispositions, trial considerations, sentencing, and any other relevant issues.

## **Essay 4 - She Lost Her Marbles**

Debbie Brown is a 5th grade school teacher who has been employed by the Parker Elementary School for the past six years. She has no criminal record and has never been arrested. Although her teaching career is progressing well, her personal life is in crisis, largely brought about by a romantic break-up with her long-time boyfriend, a fellow teacher at the school.

In her grief and depression, Debbie decides to spend a Saturday afternoon at the local shopping mall. While inside of a high-end hobby store, she grabs a handful of loose, colorful marbles with value under \$3.00 and places them in her jacket pocket. After a few more moments of walking around the store, Debbie exits into the mall without paying for the marbles. However, within a matter of seconds, she is accosted by mall security officers who take her into custody and bring her to a private office. The security officers proceed to search Debbie and recover the marbles. Then, without advising her of her constitutional rights, the mall security officers secure a written confession from her which she signs. Debbie is then turned over to the local police and taken to the police station where she is photographed, fingerprinted and served with a complaint summons (CDR-1) charging her with a violation of N.J.S.A. 2C:20-11(b)(2).

Debbie has hired you to represent her on this charge. Please detail any options available to you in defending her. Include in your discussion all important substantive and procedural issues related to the Rules of Court, ethical concerns under the New Jersey Rules of Professional Conduct, Supreme Court Directives, case or statutory law, any constitutional questions, pre-trial motions, possible plea bargaining dispositions, trial considerations, sentencing, and any other relevant issues.

**Shoplifting. Shoplifting shall consist of any one or more of the following acts:**

(1) For any person purposely to take possession of, carry away, transfer or cause to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the full retail value thereof.

(2) For any person purposely to conceal upon his person or otherwise any merchandise offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the processes, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof.

## **Essay 5 – Knock - Knock**

Following an anonymous telephone tip, township police travel to an apartment complex to investigate purported use of marijuana in one

of the apartments, specifically unit 3B. Upon arrival, the police walk to the unit 3B and knock on the door and identify themselves as the local police. A female voice inside answers, "Go away!" Not easily deterred, the police continue pounding on the door, while stating that if she does not open it immediately, she will be arrested. The woman refuses to cooperate.

After a stand-off of more than twenty minutes, the woman finally opens the door upon which she is grabbed by the police, arrested and charged with hindering the administration of law under N.J.S.A. 2C:29-1.

Because she is a first offender, the municipal prosecutor extends a plea offer that would amend the complaint to the township ordinance violation of failing to follow the lawful order of a police officer. A \$50 fine and \$33 court costs would be imposed under the plea agreement.

What courses of action are available to this defendant in the defense of her case? What would you recommend? Include in your discussion all important substantive and procedural issues related to the Rules of Court, ethical concerns under the New Jersey Rules of Professional Conduct, Supreme Court Directives, case or statutory law, any constitutional questions, pre-trial motions, possible plea bargaining dispositions, trial considerations, sentencing, and any other relevant issues.

### **N.J.S.A. - 2C:29-1. Obstructing administration of law or other governmental function**

a. A person commits an offense if he purposely obstructs, impairs or perverts the administration of law or other governmental function or



prevents or attempts to prevent a public servant from lawfully performing an official function by means of flight, intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act. This section does not apply to failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

b. An offense under this section is a crime of the fourth degree if the actor obstructs the detection or investigation of a crime or the prosecution of a person for a crime, otherwise it is a disorderly persons offense.

## **Essay 6 – Alcotest Evidence**

In State vs. Chun, 194 N.J. 54, 134(2008), the Supreme Court described three general conditions of admissibility for breath-testing

results. They are: (1) the device was in working order and had been inspected according to procedure; (2) the operator was certified; and (3) the test was administered according to official procedure.

Describe in specific detail how each of these conditions is proved in a case involving breath-test samples obtained from the Alcotest 7110 MKIII-C.

## **Essay 7 – ZZZZZZZZZZ**

At about 3:47 a.m., local police officers on patrol in Union City encounter a vehicle that is legally parked on Kennedy Boulevard. Inside the vehicle, there is a man who appears to be asleep. The police stop their own vehicle and walk over to investigate. After 5 minutes of yelling and pounding on the window, they are able to rouse the lone occupant. He identifies himself as Scott Brown. While speaking to him, the police detect the strong odor of an alcoholic beverage on his person and from within the vehicle. There are several empty beer cans on the passenger side floor. Mr. Brown explains in a rather slurred speech to the police that earlier he was driving home from a party in North Bergen and had pulled over to sleep several hours ago.

Based on the odor, the beer cans and slurred speech, the police order Mr. Brown from the vehicle and request that he perform standardized field sobriety tests, including the one-leg stand and the walk-and-turn test. The police also administer an HGN examination. In addition, upon the request of the police, Mr. Brown provides a sample of his breath into a portable breath-test unit. The unit reveals a .14 % BAC. After having watched the field sobriety tests and upon seeing the portable breath-test unit results, the testing-officer states, "Okay...you're drunk and you're now under arrest."

Following his arrest, Mr. Brown is driven by the police to the Union City station for the purposes of processing and providing breath samples. In preparation for providing breath samples, the police read Mr. Brown the first paragraph of the standard statement known as paragraph 36. When asked to take the test, Mr. Brown responds, "What's the point? You already gave me a test and said I was drunk." Following this statement, the officer terminates the testing procedure and locks Mr. Brown in a holding cell. Within a matter of seconds, Mr. Brown changes his mind and shouts to the police that he is now ready and willing take the breath test. The testing officer informs him that it is too late.

As a result of the foregoing, Mr. Brown is charged by the police with driving while intoxicated (N.J.S.A. 39:4-50(a)), driving while intoxicated in a school zone (N.J.S.A. 39:4-50(g)), refusal to submit to a breath test (N.J.S.A. 39:4-50.4a(a)), refusal to submit to a breath test in a school zone (N.J.S.A. 39:4-50.4a(b)), consuming an alcoholic beverage while driving (N.J.S.A. 39:4-51a) and reckless driving (N.J.S.A. 39:4-96). Mr. Brown's driving history reveals one prior conviction for refusal to submit to a breath test 8 years earlier.

Mr. Brown has hired you to defend him on these tickets. Please discuss the legal issues and challenges associated with representing him. Please include in your discussion all important substantive and procedural issues related to the Rules of Court, case law, ethical concerns under the New Jersey Rules of Professional Conduct, Supreme Court Directives, any constitutional questions, pre-trial motions, possible plea bargaining dispositions, trial considerations, sentencing, and any other relevant issues.